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- (c) No claim may be made hereunder by the Buyers against the Seller as a result of a breach of the representations, warranties and covenants of the Seller provided herein after the date which is two years from the end of the Supply Period.

#### 4.2 Right of Set-Off

Each of the Buyers shall have the right to satisfy any amount owing from time to time by such Buyer to the Seller by reducing such amount by any amount from time to time owing by the Seller to such Buyer, howsoever arising (and whether arising under this agreement or otherwise) including any amount owing to such Buyer pursuant to the Seller's indemnification pursuant to section 4.1 hereof or pursuant to the Purchase Agreement.

#### 4.3 Binding Arbitration

- (a) In the event of a dispute under this Agreement, the parties shall, by notice to the other party (a "Demand to Arbitrate"), elect that the matter be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by one arbitrator, chosen by the AAA, who shall administer the arbitration. The costs and expenses of any such arbitration shall be borne by the parties as determined by the arbitrator. Any such election to arbitrate shall be binding on all parties to this Agreement.
- (b) Should the arbitrator so appointed die, resign, refuse or become unable to act before a decision is given, the vacancy shall be filled by the AAA. The place of arbitration shall be Dallas, Texas. It is the agreement of the parties hereto that the arbitrator render a decision within six months of the date of the Demand to Arbitrate and that the parties use their reasonable commercial efforts to assist the arbitrator to render such decision within such time frame.
- (c) The award and all decisions of the arbitrator shall be final and binding upon the parties and there shall be no appeal therefrom to any court except as expressly permitted by the law of the place of arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In the event of any conflict between the rules of the arbitral authority and this Section, the provisions of this Section shall govern.

#### 4.4 Assignment

Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the parties hereto, whether by operation of law or otherwise; provided, however, that upon notice to the Seller and without releasing either of the Buyers from any of their obligations or liabilities hereunder, a Buyer may assign or delegate any or all of its rights or obligations under this Agreement to any Affiliate of such Buyer or any person with or into which such Buyer or any parent company of such Buyer merges or consolidates.

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The Seller agrees that upon receipt of written notice from a Buyer of such assignment, the Seller shall perform all of its obligations hereunder for the benefit of such Buyer's assignee and agrees to execute and deliver to such Buyer such documentation as such assignee may reasonably require.

Following the performance by Seller of its obligations pursuant to Article 2 hereof, Seller may assign its rights hereunder to any Affiliate of Seller; and upon receipt of written notice from Seller of such assignment, Buyer shall perform its remaining obligations hereunder for the benefit of such Seller's assignee, but nothing contained herein shall affect Seller's obligations hereunder.

#### **4.5 Entire Agreement**

This Agreement and all schedules attached hereto constitute the entire agreement between the parties hereto relating to the subject matter of this Agreement and supersede all prior agreements, letters of intent, understandings, agreements, representations, warranties or other provisions, express or implied with respect thereto, and no amendments of any provision hereof shall be binding on any party hereto unless consented to in writing by all parties.

#### **4.6 Waiver of Breach**

The parties hereto mutually covenant and agree that a waiver by any party of a breach of any of the terms of this Agreement by another party shall not be deemed a waiver of any subsequent breach of the terms of this Agreement.

#### **4.7 Invalid Provisions**

If any provision of this Agreement should be determined by a tribunal of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforce ability of the remaining provisions hereof, and each provision of this Agreement is to be considered separate, severable and distinct, except those which are an integral part of or are otherwise clearly inseparable from such invalid or unenforceable part or provision.

#### **4.8 Currency**

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in United States currency.

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